

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 CHRISTINA NEBELING, State Bar No. 171168
Department of Justice
3 300 South Spring Street
Los Angeles, California 90013
4 Telephone: (213) 897-2557

5 Attorneys for Complainant
6
7

8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	NO. AC-95-26
Against:)	
12)	<u>DEFAULT DECISION AND</u>
JAMES MICHAEL PORTER)	<u>ORDER OF THE BOARD</u>
13 29 Aspen Road)	
Kings Park, New York 11754)	[Gov. Code § 11520]
14)	
Certified Public Accountant)	
15 Certificate No. CPA 58398)	
)	
16 Respondent.)	
)	

17
18 STATUTES

- 19 1. The California State Board of Accountancy,
20 Department of Consumer Affairs ("Board"), is authorized to revoke
21 Respondent's Certified Public Accountant Certificate pursuant to
22 section 5100 of the California Business and Professions Code,
23 which provides that the Board may revoke, suspend, or refuse to
24 renew any permit or certificate issued by the Board.
- 25 2. California Government Code section 11506(b)
26 provides, in pertinent part, that the "Respondent shall be
27 entitled to a hearing on the merits if he files a notice of

1 defense, and any such notice shall be deemed a specific denial of
2 all parts of the Accusation not expressly admitted. Failure to
3 file such notice shall constitute a waiver of Respondent's right
4 to a hearing, but the agency in its discretion may nevertheless
5 grant such a hearing..."

6 3. California Government Code section 11520(a)
7 provides, in pertinent part, that "if the Respondent fails to
8 file a notice of defense to appear at the hearing, the agency may
9 take action based upon the Respondent's express admissions or
10 upon other evidence and affidavits may be used as evidence
11 without any notice to Respondent..."

12 4. Business and Professions Code section 5100
13 provides for discipline based upon the professional conduct,
14 including gross negligence in the practice of public accounting
15 [Sec. 5100(c)].

16 5. Section 5107 provides, in part, that the Board may
17 request the administrative law judge, as part of the proposed
18 decision in a disciplinary proceeding, to direct any holder of a
19 permit or certificate found in violation of section 5100(c) to
20 pay to the Board all reasonable costs of investigation and
21 prosecution of the case, including, but not limited to,
22 attorney's fees.

23 6. Under California Business and Professions Code
24 section 118, the suspension, expiration, or forfeiture by
25 operation of law of a license issued by the Board, or its
26 suspension, forfeiture, or cancellation by order of the Board or
27 by order of a court of law, or its surrender without the written

1 consent of the Board, shall not, during any period in which it
2 may be renewed, restored, reissued, or reinstated, deprive the
3 Board of its authority to institute or continue a disciplinary
4 proceeding against the licensee upon any ground provided by law
5 or to enter any order suspending or revoking the license or other
6 taking disciplinary action against the licensee on any such
7 ground.

8 JURISDICTION
9

10 7. On or about January 31, 1991, Certified Public
11 Accountant Certificate number 58398 was issued by the Board to
12 James Michael Porter ("Respondent"). The certificate expired on
13 August 1, 1991 for failure to pay the license renewal fee and
14 failure to submit evidence of compliance with the Board's
15 continuing education regulations.

16 8. On or about June 13, 1995, Complainant
17 Carol B. Sigmann, in her official capacity as Executive Officer
18 of the Board, filed Accusation No. AC-95-26 against James Michael
19 Porter. A copy of the Accusation is attached hereto as Appendix
20 A and incorporated as though fully set forth.

21 9. On or about June 27, 1995, Respondent was sent by
22 regular mail a copy of Accusation AC-95-26, Statement to
23 Respondent, Government Code section 11507.5, 11507.6, and
24 11507.7, the Notice of Defense form, and a Request for Discovery.

25 10. On or about October 17, 1995, Respondent sent a
26 letter stating that he did not desire a hearing on this case.
27

FINDINGS OF FACTS

Pursuant to its authority under Government Code section 11520, and based on the evidence before it, the Board finds that:

11. Respondent is subject to discipline under Business and Professions Code section 5100(c) by reason of the following facts:

On or about March 31, 1991, Respondent performed an audit for Briarcliff Homeowners' Association for the year ending March 31, 1991. Thereafter, on or about July 2, 1991, Respondent issued an audit report which was deficient in the following respects:

(a) Respondent used report language that was superseded by Statements on Auditing Standards No. 58 effective for audit reports issued on or after January 1, 1989.

(b) Respondent failed to properly present supplementary information.

(c) Financial statements presented with Respondent's audit report did not include a statement of cash flows.

(d) Notes to financial statements accompanying Respondent's report did not present the significant accounting policies of Briarcliff Homeowners' Association.

///

///

///

///

///

1 Each act alleged in subparagraphs (a) through (d) is
2 extreme departure from the standard of practice in public
3 accountancy.

4
5 DETERMINATION OF ISSUES

6 12. Respondent is subject to disciplinary action
7 pursuant to section 5100 of the California Business and
8 Professions Code as established in the jurisdictional findings in
9 paragraph one, above.

10 13. Respondent is subject to disciplinary action
11 pursuant to section 5100 (c) of the California Business and
12 Professions Code on the grounds of gross negligence in his audit
13 of Briarcliff Homeowners' Association by reason of the Finding of
14 Fact numbers 1 through 3, above, and cause for revocation has
15 been established.

16 14. At the time of this decision, the Board's costs of
17 investigation and prosecution of this matter are \$7,715.00 (seven
18 thousand, seven hundred, fifteen dollars).

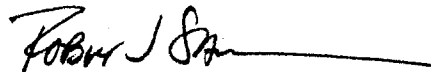
19
20 ORDER OF THE BOARD OF ACCOUNTANCY

21
22 Certified Public Accountant Certificate number
23 CPA 58398, heretofore issued to Respondent James Michael Porter,
24 is hereby revoked. An effective date of November 4, 1996 has been
25 assigned to this Order.

26 Pursuant to California Government Code section 11520,
27 subdivision (b), Respondent is entitled to make any showing by

1 way of mitigation; however, such showing must be made in writing
2 to the Board of Accountancy, 2000 Evergreen Street, Suite 250,
3
4 Sacramento, California 95815, prior to the effective date of this
5 decision.

6
7 Made this 4th day of October, 1996.

8
9 

10 ROBERT J. SHACKLETON
11 President
12 Board of Accountancy
13 Department of Consumer Affairs

14 CN:sp

15 (A:\porter.acc)
16
17
18
19
20
21
22
23
24
25
26
27

DANIEL E. LUNGREN, Attorney General
of the State of California
HOOMAN ROWSHAN,
Deputy Attorney General, State Bar No. 157821
Department of Justice
300 South Spring Street
Los Angeles, California 90013
Telephone: (213) 897-2580

Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) NO. AC-95-26
Against:)

JAMES MICHAEL PORTER) ACCUSATION
717 Avenue A)
Redondo Beach, CA 90277)
License No. CPA No. CPA 58398,)

Respondent.)
_____)
_____)

Complainant, Carol Sigmann, alleges:

1. She is the Executive Officer of the Board of
Accountancy (hereinafter referred to as the "board") of the
Department of Consumer Affairs of the State of California, and
makes and files this accusation solely in her official capacity.

2. On January 31, 1991, the board issued to
James Michael Porter (hereinafter referred to as the
"respondent") certified public accountant certificate number CPA
58393 for the practice of public accountancy. The said
certificate expired on August 1, 1991, for failure to pay the
license renewal fees and failure to submit evidence of compliance

1 with the board's continuing education requirements.

2 3. Business and Professions Code section 5100 provides
3 that the board may revoke, suspend or refuse to renew the permit
4 or certificate of a public accountant, or may censure the holder
5 of a permit or certificate for unprofessional conduct.

6 4. Business and Professions Code section 5100(c)
7 provides that unprofessional conduct includes but is not limited
8 to gross negligence in the practice of public accountancy.

9 5. Respondent is subject to discipline under Business
10 and Professions Code section 5100(c) by the reason of the
11 following facts:

12 On or about March 31, 1991, respondent performed an
13 audit for Briarcliff Homeowners' Association for the
14 year ended March 31, 1991. Thereafter, on or about
15 July 2, 1991, respondent issued an audit report which
16 was deficient in the following respects:

17 (a) Respondent used a report language that
18 was superseded by Statements on Auditing Standards
19 No. 58 effective for audit reports issued on or after
20 January 1, 1989.

21 (b) Respondent failed to properly present
22 supplementary information.

23 (c) Financial statements prepared by the
24 respondent did not include a statement of cash flow.

25 (d) Respondent's notes to financial
26 statements did not present the significant accounting
27

1 policies of Briarcliff Homeowners' Association.

2 Each act alleged in subparagraphs (a) through (d) is an
3 extreme departure from the standard of practice in public
4 accountancy.

5 6. Business and Professions Code section 5107 provides
6 that in any order issued in resolution of a disciplinary
7 proceeding before the board, the executive officer of the board
8 may request the administrative law judge to direct the
9 certificate holder found to have violated Business and
10 Professions Code section 5100 to pay to the board a sum not to
11 exceed the actual and reasonable costs of the investigation and
12 prosecution of the matter, including attorneys' fees.

13 NOTICE IS HEREBY GIVEN respondent that pursuant to
14 Business and Professions Code section 5107, complainant hereby
15 requests the administrative law judge to direct respondent if
16 found in violation, to pay to the board the reasonable costs of
17 the investigation and prosecution of this matter.

18 /

19 /

20 /

21 /

22 /

23 /

24 /

25 /

26 /

27 /

1 WHEREFORE, complainant prays that a hearing be held and
2 that the board makes its order:

3 1. Revoking or suspending Certified Public Accountancy
4 Certificate number CPA 58398, issued to James Michael Porter;

5 2. Directing James Michael Porter to pay to the Board
6 of Accountancy the reasonable costs of its investigation and
7 prosecution of this matter; and

8 3. Taking such other and further action as may be
9 deemed just and appropriate.

10 DATED: June 13, 1995

11
12
13 

14 Carol B. Sigmann
15 Executive Officer
16 Board of Accountancy
17 Department of Consumer Affairs
18 State of California

19 Complainant
20
21
22
23
24
25
26

27 HR:eyg
 a:\A-Porter.act
 03541110-LA95AD0823